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Remarks

In the non-final Office Action mailed on May 7, 2004, claims 1-3, 5-10 and 12-26 are pending, of which claims 1-3, 5-10 and 12-26 stand rejected. By this response all claims continue unamended and arguments address the Examiner's rejections are provided. In view of the following discussion, the applicants submit that none of the claims now pending in the application are obvious under the provision of 35 U.S.C. §103. Thus, the applicants believe that all of these claims are now in allowable form.

It is to be understood that the applicants, do not acquiesce to the Examiner's characterizations of the art of record or to applicants' subject matter recited in the pending claims. Further, applicants are not acquiescing to the Examiner's statements as to the applicability of the art of record to the pending claims by filing this submission.

Rejections

35 U.S.C. 103

The Examiner has rejected claims 1-3, 5-10 and 12-26 under 35 U.S.C. 103(a) as being unpatentable over Slattery U.S. Patent No. 6,246,701 ("Slattery") in view of Gardner et al. U.S. Patent No. 6,327,275 ("Gardner"). Specifically and with respect to independent claims 1, 7, 12 and 13, the Examiner offers that Slattery discloses a method and apparatus for processing a transport stream comprising time slots for transporting respective programs having a common time base indicated by periodically inserted time stamps comprising modifying packets associated with a desired time slot of a received transport stream to produce an output transport stream and transmitting the output transport stream, wherein the transmitted output transport stream includes respective modified programs having the common time base indicated by the periodically inserted time stamps provided by the received transport stream. The Examiner continues by indicating that Slattery does not specifically disclose the modified packet uses a matching time stamp of the received transport stream, but alleges that Gardner does per Col. 1, lines 7-14, Col 4, lines 30-59 and Col. 5, lines 5-13. The Examiner concludes that it would've been obvious to use a matching time

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stamp as taught by Gardner in the system of Slattery to maintain the timing of the packets in the received transport stream. The applicants continue to respectfully traverse the rejection.

It is respectfully submitted that the disclosure of Gardner is insufficient to adequately teach or suggest the claimed elements as identified by the Examiner. Case law previously cited by the Applicant in the April 5, 2004 Preliminary Response is still noted and may be reviewed at the Examiner's discretion. Additionally, Applicant reminds the Examiner that the burden of proving the *prima facie* case of obviousness is with the Examiner. "In determining the propriety of the Patent Office case for obviousness in the first instance, it is necessary to ascertain whether or not the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed substitution, combination or other modification". In re Lintner, 458 F.2nd 1013, 173 USPQ 560, 562 (C.C.P.A. 1972). See also In re Fielder, 471 F.2d 640, 176 USPQ 300, 302 (C.C.P.A. 1973). As the cited references (and in particular, Gardner) do not have adequate teachings to make the appropriate substitution, combination or other modification to Slattery, Applicant contends that the claims cannot be considered obvious in view of the cited references.

Specifically, the apparent sole issue with regards to the teachings of the cited art in comparison to the subject Invention is whether a modified packet uses a matching time stamp of the received transport stream. For sake of brevity independent claims 1, 7, 12 and 13 are not repeated in this response but are easily reviewed in Applicant's prior response of April 5, 2004. In that response and at the middle of page 6, Applicant opened the detailed portion of his argument by indicating that "Gardner provides no specific description of how a modified packet uses a matching time stamp as claimed." The Examiner's specific wording in the claims rejection section (Section 2 of the current office action) has not changed from previous rejections. However, in the response to Arguments section (Section 3 of the current office action) the Examiner provides a clarifying statement regarding his interpretation and subsequent support for the rejection. The following comments address this new interpretation and support.

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In detail, Applicant notes that the Examiner indicated that the prior argument was not persuasive because the independent claims, "merely claim that a modified packet uses a matching time stamp without providing any specific description of <u>how</u> the modified packet uses the matching timestamp". In response, Applicant understands that the Examiner is perhaps looking for more information because the word "how" was included in Applicants' original argument. However, the supporting details of the argument subsequent to Applicants' opening statement should have provided enough information to indicate that it was not so much <u>how</u> the modified packet used the matching timestamp as much as the recitation of the claimed element (the modified packet using the matching timestamp) existed in the claim. That is, while the Applicants' grammar in the opening statement of the prior office action may not have been perfectly on point, the supporting argument was plainly sufficient to show that the teachings of the cited art were insufficient and that the Examiner's subsequent conclusion was improper. Specifically, in each instance of specifically cited portions in Gardner, the Applicant clearly showed that there was no specific discussion of <u>matching timestamps existing in the cited art</u>. Further, Applicants' argument did not go into any detail to attempt to show differences of how the modified packet of the present invention differed from the modified packet of the cited art because it was not necessary to do so. The major deficiency at each Examiner-cited portion of the reference was that there was no matching time stamp discussed at all. Specifically, column 1, line 7-14, column 4, line 30-59 and column 5, line 5-13 were each individually cited and specifically shown that they do not contain language or any type of interpretation of a modified packet using a matching timestamp (regardless of <u>how</u> such modified packets may use the timestamp as this was not the issue required to meet the claim limitation).

Further in addressing the Examiner's response to arguments (Section 3 of the current Office Action) the Examiner offers column 4, lines 30-48 and column 5, lines 5-13 to show replacing of a program (B) packet with a null program or replacing a program (B) packet with the data from a local data signal to be the same as replacing packet 1 in T_{in1} with packet 4 in T_{in2} to produce T_{out} in the subject invention. In

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response, it is respectfully submitted that these two cited portions are part of the identically cited material by the Examiner in the prior office action and that these points have already been discussed in detail as being deficient with respect to revealing, teaching, or suggesting the claimed element of a modified packet using a matching timestamp in the received transport stream. It is further indicated that mere replacement of the B packet with a null program packet or with a local data signal as specifically offered by the Examiner in the current office action is still deficient as there is absolutely no discussion of a timestamp with regards to the null program or the local data signal. That is, and as held by the applicant all along, is that Gardner does not show a correlation of a modified packet and a timestamp incorporated or as part of the received transport stream in the manner claimed. As a reminder, it is incumbent upon the Examiner to show that the reference teachings appear to have suggested the claimed subject matter and not to make comparisons between material in the cited reference and the specification portion of the application.

The Examiner further offered alleged teachings in two new portions of Slattery to support his position. Specifically, the Examiner indicates that Slattery implicitly discloses the discussed limitation by inserting a null packet into a time slot of a received transport stream to maintain the predetermined bit rate of the transport stream as described in column 10, lines 33-34 and column 40, lines 25-34. Upon review of the cited portions, Applicants respectfully submit that same have no bearing on supporting the Examiner's position or provide teaching of the claimed feature. Specifically, column 10, lines 33-44 of Slattery are part of a larger paragraph (starting from line 27 and ending at line 44 which generally describes a method for optimizing bandwidth of the transport stream with null packets inserted therein. All that is provided in this paragraph is a discussion of optimizing the bandwidth of a transport stream that has null packets inserted therein. The processor managing the transport stream selectively replaces one or more of the null packets with a data bearing transport packet so that PSI data or bursty transactional data can be transmitted without affecting the overall transport bit rate. The discussion at column 40, lines 25-34 is nearly identical because it also discusses bandwidth optimization (per the section heading at line 7 of column 40).

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Neither location of Slattery provided by the Examiner includes a discussion of timestamp usage or the modified packet using such matching timestamp. For example, at either cited section where replacement of the null packet with to-be-remultiplexed transport packet data is discussed, it is simply not known, discussed or described as to whether the timing of this information is important or relevant enough to warrant timestamping let along using a matching timestamp as claimed.

Accordingly, if the references could somehow be operably combined, the references would merely disclose a PCR normalization process (of Slattery) where the processor schedules each transport packet to be outputted in a time slotted at a particular dispatch time corresponding to a predetermined delay in the multiplexer node, and a general remultiplexing of packets (of Gardner). Thus, neither reference, either singularly or in combination, teach or suggest "said slotted transport streaming including respective modified programs having said common time base indicated by said periodically inserted time stamps provided by said received transport stream, wherein a modified packet uses a matching time stamp of said received transport stream." Therefore, the combined references fail to teach or suggest the applicants' invention as a whole.

As such, the applicants submit that independent claims 1, 7, 12 and 13 are not obvious and fully satisfy the requirements under 35 U.S.C. §103 and are patentable thereunder. Furthermore, claims 2, 3, 5, 6, 8-10, 11, and 14-26 respectively depend from independent claims 1, 7 and 13 and recite additional features thereof. As such, and for the same reasons as discussed above, the applicants submit that these dependent claims also are not obvious and fully satisfy the requirements under 35 U.S.C. §103 and are patentable thereunder. Therefore, the applicants respectively request that the rejections be withdrawn.

CONCLUSION

Thus, the applicants submit that none of the claims presently in the application are obvious under the provision of 35 U.S.C. §103. Consequently, the applicants

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believe that all these claims are presently in condition for allowance. Accordingly, reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall, Esq. at (732) 530-9404 so appropriate arrangements can be made for resolving such issues as expeditiously as possible.
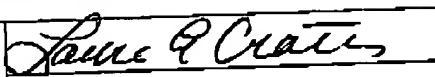
Respectfully submitted,

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August 4, 2004

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CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. 1.8

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